# The Malayan Law Journal

1980

REPORTS

OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.


## SINGAPORE REPORTS

### HONG HUAT TIMBER TRADING CO. v. LIEW KWEE CHIN

**[C.A. (Chua, Choor Singh & Rajah JJ.) September 4, 1979]**
**[Singapore — Civil Appeal No. 60 of 1977]**

*Damages — Quantum — Leg injury resulting in amputation — Award of $97,000 with costs on basis of 50% contributory negligence — Appeal — Reduction of award to $7,600 based on additional evidence adduced.*

The appeal in this case arose from a claim by the plaintiff for damages for personal injury suffered by him, caused by the negligence of the defendants or their servants in the management and control of an engine by means of which a wire hawser was used to pull logs off a lorry and then up a slope for stacking in the defendants' sawmill. The plaintiffs' leg had to be amputated when gangrene set in. The learned trial judge held that the said amputation was a direct consequence of the injuries received by the plaintiff in the accident. He therefore awarded the plaintiff $97,000 with costs on the basis of 50% contributory negligence on the plaintiff's part. The defendants appealed.

**Held,** allowing the appeal: (1) in view of the addition evidence adduced it was no longer possible to say that the amputation of the plaintiff's leg flowed directly from the injuries that the plaintiff received in the accident;

(2) if the learned trial judge had had the said evidence before him, the assessment of damages would have proceeded not on the basis of a below knee approximately mid-calf amputation of the right leg but on the basis of a heal bone broken up in many pieces and a fracture of the right malleolus;

(3) the damages awarded to the plaintiff would therefore be reduced from $97,000 to $7,600.

CIVIL APPEAL.

*N.C. Goho* for the appellants.

*Karuppan Chettiar* for the respondent.

**Rajah J.** (delivering the judgment of the Court): This appeal arises from a claim by the respondent (plaintiff) for damages for personal injuries suffered by him, caused by the negligence of the appellants (defendants) or their servants or agents in the management and control of an engine by means of which a wire hawser was used to pull logs off a lorry and then up a slope for stacking in the appellants' sawmill.

At the conclusion of the trial judgment was given for the respondent against the appellants in the sum of $97,000 with costs on the basis of 50% contributory negligence on the part of the respondent.

The appellants, being dissatisfied with the judgment, have appealed against the whole of the said judgment, that is to say on the three heads, (1) liability, (2) apportionment of liability and (3) damages.

Immediately prior to the hearing of the appeal, the appellants moved the Court of Appeal for liberty to adduce, in addition to the evidence before the court below, the evidence of one Dr. Gurbaksh Singh, the Medical Superintendent of the Johore Bahru General Hospital, which related solely to the question of quantum of damages, as set out in his affidavit filed in support of the motion. After hearing both counsel we allowed the application and the said affidavit was admitted into evidence.

On the question of liability for the accident and the apportionment thereof as between the parties herein nothing was urged upon us as would induce us to disturb the findings of the learned trial judge thereon and we accordingly uphold his apportionment of "the blame as 50-50 between the 2 parties."

Now, on the question of the damages awarded. On this the learned trial judge had this to say, "Regarding the amputation of the plaintiff's leg I find that it flows directly from the injuries that the plaintiff received in this accident. There is nothing in the medical or other evidence that it was otherwise. Soon after his discharge from the Singapore Hospital he was admitted to the Johore Bahru Hospital. He had been there for a few days when gangrene set in and his leg had to be amputated. PW1's expert medical evidence was clear that this sort of complication can arise from such an injury as plaintiff sustained without any negligence on anybody's part." The affidavit of Dr. Gurbaksh Singh makes it quite clear that the respondent was, in fact, admitted to the Johore Bahru Hospital on April 24, 1972 at 8.15 p.m. and not on April 12, 1972 as the respondent swore to in his evidence. On the evidence it would not be unreasonable to infer that the respondent, having been discharged at his own request to see a Chinese Sinseh, after leaving the Thomson Road General Hospital on April 12, 1972 had in fact gone to a sinseh and, when his condition got worse, decided to get himself admitted to the Johore Bahru General Hospital, which he did on April 24, 1972. In view of the additional evidence it is no longer possible to say that the amputation of the respondent's leg flows directly from the injuries that the respondent received in the accident. If the learned trial judge had had Dr. Gurbaksh Singh's evidence before him the assessment of damages would have proceeded not on the basis of a below knee approximately mid-calf amputation of the right leg but on the basis of a heal bone broken up in many pieces and a fracture of the right malleolus. For these two injuries we assess damages for pain and suffering

and loss of amenities at $4,000. The special damages for loss of earnings was fixed at $16,800 + $11,400 = $28,200. Presumably these figures were adopted by the learned trial judge on submissions made by counsel for the respondent (see page 68 of Record):

"Plaintiff 42 years old now; 37 at time of accident.

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|---|---|
| Average salary | $450 p.m. |
| Coffee money | $150 p.m. |
| Total earnings | $600 p.m. |

Able to get about August 1974 — 28 months after accident.

Could not have worked for 28 months —

28 x 600 = $16,000 — A

August 74 — September 77 — he could have got some sort of work.

No heavy work with one leg — can't drive — suggest light work — stall holders assistant, etc.

Malaysian citizen.

Suppose he earned $400 — far more than he could have earned.

Loss work — $300 x 38 months = $11,400 — B"

Obviously this sum of $28,400 cannot be allowed to stand. Allowing the total earnings of the respondent at time of accident at $600 per mensem and, in the absence of evidence as to how long the 2 injuries on their own would have incapacitated the respondent, taking an arbitrary figure of 6 months (respondent's counsel during the appeal suggested that it could be 9 months) as the period the respondent could not have worked, we allow $3,600 as special damages for loss of earnings. In the circumstances damages of $33,800 awarded for loss of future earnings cannot stand and are disallowed. The damages awarded to the respondent will therefore be reduced from $97,000 to $7,600. The appellants are to have the costs of the appeal and the respondent will be allowed costs in the court below on the Subordinate Court scale.

*Appeal allowed.*

Solicitors: *S.C. Goho & Co.; Murphy & Dunbar.*

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## HAW TUA TAU v. PUBLIC PROSECUTOR

**[C.C.A. (Wee Chong Jin C.J., Kulasekaram & D'Cotta JJ.) September 7, 1979]**

**[Singapore — Criminal Appeal No. 1 of 1978]**

*Criminal Law and Procedure — Murder — Accused charged on December 13, 1976 — Appealed on conviction as charged — Whether appellant had substantive right to make unsworn statement — Amendment to the law with effect from January 1, 1977 — Criminal Procedure Code (Cap. 113), ss. 181(2), 182 & 186A — Penal Code, s. 302.*

*Constitutional law — Right of accused to make unsworn statement from the dock — Whether sections 181(2) & 186A, Criminal Procedure Code (Cap. 113), contravene Article 7 of Malaysian Federal Constitution.*

The appellant in this case was charged on two separate charges with having caused the death of two named persons in circumstances amounting to murder, an offence punishable under section 302 of the Penal Code. The High Court convicted him as charged and sentenced him to death.

He appealed, *inter alia*, that the High Court erred in applying sections 181(2) and 186A, two recent provisions which were enacted by Parliament and came into operation on January 1, 1977. He claimed that he had a substantive right which accrued to him when he was first charged on December 13, 1976 to make an unsworn statement under the law as it stood before sections 181(2) and 186A came into operation. He further contended that these two statutory provisions were void as being repugnant to article 7 of the Malaysian Federal Constitution which is law in Singapore by virtue of the Republic of Singapore Independence Act, 1965.

**Held,** dismissing the appeal: (1) before the trial of the appellant the legislature by section 186A of the Criminal Procedure Code had expressly taken away the right of an accused person at his trial to make an unsworn statement from the dock;

(2) the two new sections did not contravene the provisions of Article 7 of the Malaysian Federal Constitution;

(3) there was overwhelming evidence which showed that the appellant intentionally and deliberately inflicted the fatal injuries on two unarmed persons.

[**Editorial Note:** Appeal to the Privy Council is still pending.]

*Case referred to:-*

(1) *Mohamed Salleh* v. *Public Prosecutor* [1969] 1 M.L.J. 104.

CRIMINAL APPEAL.

*Mohideen M.P. Haja Rubin* for the appellant.

*E.C. Foenander* (Deputy Public Prosecutor) for the respondent.

**Wee Chong Jin C.J.** (delivering the judgment of the Court): On December 12, 1976 the appellant, Haw Tua Tau, caused the death of two persons, Phoon Ah Leong and Hu Yuen Kheng. He was arrested on the same day and on December 13, 1976 he was produced before a magistrate and charged on two separate charges with having caused the death of these two persons in circumstances amounting to murder. Eventually, on March 6, 1978 the appellant was brought before the High Court for trial on these two charges which read as follows: —

First Charge —

"Haw Tua Tau, you are charged that you on or about the 12th day of December, 1976, at about 6.00 p.m. at Block 40-A, Margaret Drive Hawkers' Centre, Singapore, did commit murder by causing the death of one Phoon Ah Leong, and you have thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103)."

Second Charge —

"Haw Tua Tau, you are charged that you on or about the 12th day of December, 1976, at about 6.00 p.m. at Block 40-A, Margaret Drive Hawkers' Centre, Singapore, did commit murder by causing the death of one Hu Yuen Kheng, and you have thereby committed an offence punishable under section 302 of the Penal Code (Chapter 103)."

The High Court convicted the appellant on both charges and sentenced him to suffer punishment by death. He now appeals against his conviction and sentence.

At the close of the prosecution's case the court called upon the appellant to enter upon his defence on both charges. Chua J., the presiding trial judge said: —

"Will you tell the accused that we find that the prosecution has made out a case against you on both the charges on which you are being tried which if unrebutted would warrant your conviction. Accordingly, we call upon you to enter upon your defence on both the charges.

Before any evidence is called for the defence we have to inform you that you will be called upon by the court to give evidence in your own defence. You are not entitled to make a statement without being sworn or affirmed and accordingly if you give evidence, you will do so on oath or affirmation and be liable to cross-examination. If after being called by